Policy Framework for
the Regional Biometric
Data Exchange Solution

The Bali Process
on People Smuggling, Trafficking in Persons and Related Transnational Crime

Part 5: Template Associated Arrangements
Framework Templates

Attachment 4 – Template Associated Arrangements
Attachment 5 – Template Correspondence
Attachment 6 – Template Privacy Impact Assessment
Attachment 7 – Template privacy notices and consent form
MODEL EXCHANGE OF LETTERS

Initiating letter

PARTICIPATION IN THE REGIONAL BIOMETRIC DATA EXCHANGE SOLUTION

I have the honour to refer to discussions which have taken place between our [two] Governments concerning participation in the Regional Biometric Data Exchange Solution (RBDES) developed by the Regional Support Office of the Bali Process (RSO) and endorsed by the Senior Officials of the Bali Process Ad Hoc Group. As a result of those discussions it is the understanding of the Government of [XXX] that the following shall apply:

1. The Governments of [XXX] and [XXX] have mutually decided to participate and exchange information through the Regional Biometric Data Exchange Solution.

2. Our [two] Governments have mutually decided to comply with the Terms of Use for the Regional Biometric Data Exchange Solution (Terms of Use). These Terms of Use, including any amendments to the Terms of Use, form part of this arrangement between our two Governments and is annexed at Annexure A. If there is any incompatibility between these Exchange of Letters and the Terms of Use, the provisions in the Terms of Use will prevail to the extent of any incompatibility.
3. The Governments of [XXX] and [XXX] have mutually decided that the Terms of Use and these Exchange of Letters do not create legally enforceable obligations under international law for our Governments’ participation in the RBDES.\(^6\)

4. The Government of [XXX] will exchange information only in the following circumstances:
   a. [For example, verifying the identity of foreign travelers]
   b. [For example, verifying the identity of asylum seekers and refugee claimants].

5. There will be a maximum of [500] requests per year by each of our Governments.

6. The Government of [XXX] will make requests using only the following biometric information:
   a. [For example, facial images].
   The Government of [XXX] will make requests using only the following biometric information:
   b. [For example, 10 fingerprints].

7. The Government of [XXX] will match biometric information only from the following databases:
   a. [For example, the Automatic Fingerprint Identification Database].
   The Government of [XXX] will match biometric information only from the following databases:
   b. [For example, the National Identification Card database].

8. Upon receiving a “positive match” the Government of [XXX] will exchange the following further information:
   a. [For example, reasons why biometric data was enrolled]

9. The maximum time period for which a response can be given is [XXX] working days.

10. The procedures for access and correction by individuals of their personal information by the Government of [XXX] will be [for example, pursuant to the Government of [XXX]’s privacy laws]

11. The Government of [XXX] will establish the following security mechanisms:
   a. [For example, information sent through the Framework will have a “In-confidence” security classification]
   b. [For example, information will be retained for 6 months and deleted after this period]

12. The procedures for our [two] Governments to notify each other and the RBDES Manager of the designated departments, ministries and National Accountability Officers are as follows:
   a. [For example, our two Governments will notify each other and the RBDES Manager in writing of the designation within 7 days of the designation]
   b. [For example, our two Governments will notify each other and the RBDES Manager in writing of any changes, temporary or otherwise, to the designation within 7 days of the change.]

\(^6\) If members intend to create legally binding obligations, drafters may amend this sentence by deleting the “not” so that this sentence reads “… the Terms of Use and these Exchange of Letters do create legally enforceable obligations … “. Drafters must also change the language throughout these Letters to reflect the legally binding nature of the agreement. Suggested language changes include: “arrangement” and “understanding” becomes “agreement”, “decide” becomes “agree”, “will” becomes “shall”, and “come into effect” becomes “enter into force”.
13. The Government of [XXX] will provide the following additional safeguards:
   a. [For example, if it is unclear whether an individual is a child or an adult, our two Governments will take the appropriate measures to determine the individual’s age as soon as possible]

14. These arrangements will last [indefinitely/for 1 year/for 2 years/for 5 years].

15. This understanding may be amended at any time by the mutual written consent of both Governments.

16. The Government of [XXX] will establish the following further operational procedures:
   a. [For example, each of our Governments may request assurance from the other at any time that they are continuing to meet the requirements of this arrangement.]

17. The Governments of [XXX] and [XXX] will inform the RBDES Manager in writing that we have entered into an Associated Arrangement consistent with paragraph 5 of the Terms of Use.²

If the proposals set out above are acceptable to the Government of [XXX], I have the honour to suggest that this Letter and your reply to that effect shall constitute a mutual understanding between our two Governments on this matter, which will come into effect upon written confirmation by the RBDES Manager.

[signature blocks]

Annexure A

² The RSO has developed model notification letters for this purpose.
Reply letter

PARTICIPATION IN THE REGIONAL BIOMETRIC DATA EXCHANGE SOLUTION

I have the honour to acknowledge receipt of your Letter dated [DATE] concerning our Government’s discussion relating to participation in the Regional Biometric Data Exchange Solution, which reads as follows:

[Text of the initiating letter set out in full, if necessary in translation].

I have the honour to confirm that the above proposals are acceptable to the Government of [XXX], and that your Letter and this reply shall constitute a mutual understanding between our two Governments on this matter, which will come into effect upon written confirmation by the RBDES Manager.

[signature blocks]
MODEL MEMORANDUM OF UNDERSTANDING BETWEEN [GOVERNMENT OF XXX] AND [GOVERNMENT OF XXX] CONCERNING PARTICIPATION IN THE REGIONAL BIOMETRIC DATA EXCHANGE SOLUTION

Introduction

The [Government of XXX] and the [Government of XXX] (the Participants),

Recognizing the importance of burden sharing, collective responsibility and regional cooperation to address irregular migration, including people smuggling, trafficking in persons and related transnational crimes, and to facilitate comprehensive migration management approaches;

Desiring to participate in the Regional Biometric Data Exchange Solution (RBDES) to facilitate cooperation between the Participants through the timely and secure exchange of biometric and biographical data for the purposes of identity verification and combating identity fraud that incorporates general privacy principles;

Respecting the importance of confidentiality of personal information, including biometric and biographical data, and upholding the individual's human rights, including the right to privacy, through complying with minimum safeguards, checks and balances and oversight mechanisms under a policy framework;

Noting that the use of the RBDES will complement and not prejudice any other information sharing mechanism available to the Participants; and

Noting that participation in the RBDES forms part of a greater context of general information sharing among Bali Process members through the Regional Cooperation Framework;

Have reached the following understanding:

Purpose

1. The Participants will participate in the Regional Biometric Data Exchange Solution (RBDES) developed by the Regional Support Office of the Bali Process (RSO). The Participants aim to use the RBDES to facilitate the exchange of biometric and biographical data between the Participants using a harmonized and consistent approach that respects the diversity of the bilateral relationship between the Participants, and provides minimum safeguards consistent with international standards and obligations.\(^{10}\)

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\(^{8}\) This model Memorandum of Understanding may be used by interested Bali Process members when developing their Associated Arrangements, which are required for participation in the Regional Biometric Data Exchange Solution developed by the RSO. Text in square brackets outline the specific details of the arrangement and must be specified by the drafters. Text that is not in square brackets may also be amended by drafters.

\(^{9}\) Drafters may wish to insert a new paragraph and provide further background to the discussions between the two members.

\(^{10}\) This purpose reflects the purpose outlined in paragraph 2 of the Terms of Use.
Incorporation of the Terms of Use

2. The Participants will comply with the Terms of Use for the Regional Biometric Data Exchange Solution (Terms of Use). The Terms of Use, including any amendments to the Terms of Use, form part of this Memorandum and is annexed at Annexure A.\(^\text{11}\) If there is any incompatibility between this Memorandum and the Terms of Use, the provisions of the Terms of Use will prevail to the extent of an incompatibility.\(^\text{12}\)

Specific arrangements between the Participants

3. The Participants have jointly decided that the Terms of Use and this Memorandum do not create legally enforceable obligations under international law for their participation in the RBDES.\(^\text{13}\)

4. The [Government of XXX] will exchange information only in the following circumstances:
   a. [For example, verifying the identity of foreign travelers]
   b. [For example, verifying the identity of asylum seekers and refugee claimants].

5. There will be a maximum of [500] requests per year by [each of the Participants],

6. The [Government of XXX] will make requests using only the following biometric information:
   a. [For example, facial images].
   The [Government of XXX] will make requests using only the following biometric information:
   b. [For example, 10 fingerprints].

7. The [Government of XXX] will match information only from the following databases:
   a. [For example, the Automatic Fingerprint Identification Database].
   The [Government of XXX] will match biometric information only from the following databases:
   b. [For example, the National Identification Card database].

8. Upon a positive match, the [Government of XXX] will exchange the following further information:
   a. [For example, reason why biometric data was enrolled].

9. The maximum time period for which a response can be given under paragraph 14 of the Terms of Use is [XXX] working days.

10. The procedures for access and correction by individuals of their personal information by the [Government of XXX] will be [for example, pursuant to the Government of [XXX]’s privacy laws].

\(^\text{11}\) This statement ensures that the Terms of Use forms part of this arrangement and therefore has the same status as this Memorandum of Understanding.

\(^\text{12}\) The statements contained in this paragraph are required for participation in the Solution.

\(^\text{13}\) If members intend to create legally binding obligations, drafters may amend this sentence by deleting the “not” so that this sentence reads “… the Terms of Use and this Memorandum of Understanding do create legally enforceable obligations …”. Drafters must also change the language throughout this document to reflect the legally binding nature of the agreement. Significantly, the document can be amended to become an “Agreement” instead of a “Memorandum of Understanding”. Other suggested language changes include: “memorandum”, “arrangement” and “understanding” becoming “agreement”, “Participants” becoming “Parties”, “decide” becoming “agree”, “will” becoming “shall”, and “come into effect” becoming “enter into force”.

Policy Framework for the Regional Biometric Data Exchange Solution
11. The [Government of XXX] will establish the following security mechanisms:
   a. [For example, information sent through the System will have a “In-confidence” security classification]
   b. [For example, information will be retained for 6 months and deleted after this period.]

12. The procedures for the Participants to notify each other and the RBDES Manager of the designated departments, ministries and National Accountability Officers are as follows:
   a. [For example, the Participants will notify each other and the RBDES Manager in writing of the designations within 7 days of the designation]
   b. [For example, the Participants will notify each other and the RBDES Manager in writing of any changes, temporary or otherwise, to the designations within 7 days of the change.]

13. The [Government of XXX] will provide the following additional safeguards:
   a. [For example, if it is unclear whether an individual is a child or an adult, the Participants will take the appropriate measures to determine the individual’s age as soon as possible].

14. This Memorandum will last [indefinitely/for 1 year/for 2 years/for 5 years].

15. This Memorandum may be amended at any time by the mutual written consent of both Participants.

16. The [Government of XXX] will establish the following further operational procedures:
   a. [For example, each Participant may request assurance from the other at any time that they are continuing to meet the requirements of this memorandum].

17. The Participants will notify the RBDES Manager in writing that they have entered into an Associated Arrangement consistent with paragraph 5 of the Terms of Use.14

**Final Paragraphs**

18. This Memorandum will come into effect upon written confirmation by the RBDES Manager pursuant to paragraph 6 of the Terms of Use. The foregoing represents the understanding reached between the Participants on the matters referred to in this Memorandum.

   [signature blocks]

Annexure A – Terms of Use

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14 The RSO has developed model notification letters for this purpose.